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February 6, 2006

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: **CERTIFICATION OF CPNI FILING DATED FEBRUARY 6, 2006**  
**EB DOCKET NO. 06-36**  
**EB-06-TC-060**

Dear Ms. Dortch:

Pursuant to the Commission's Public Notices, DA 06-223 released January 30, 2006 and DA 06-258 released February 2, 2006, US LEC Corp., on behalf of itself and its operating subsidiaries, submits its CPNI Compliance Certification and accompanying statement for the year ending December 31, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry J. Romine", is written over a horizontal line.

Terry J. Romine  
Deputy General Counsel

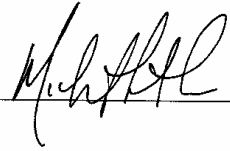
Enclosures

*Our mission is to be the premier communications partner for businesses by delivering  
quality voice, data and Internet services and by exceeding expectations for customer care.*

CERTIFICATION

I, Michael L. Shor, hereby certify this 6<sup>th</sup> day of February 2006 that I am an officer of US LEC Corp., and that I have personal knowledge that US LEC Corp., on behalf of itself and its operating subsidiaries as set forth below, has established operating procedures that are adequate to ensure compliance with the FCC's Customer Proprietary Network Information rules set forth in 47 C.F.R. §§ 64.2001 – 64.2009.

The operating subsidiaries covered by this Certification are: US LEC of Alabama Inc.; US LEC of Florida Inc.; US LEC of Georgia Inc.; US LEC of Maryland Inc.; US LEC of New York Inc.; US LEC of North Carolina Inc.; US LEC of Pennsylvania Inc.; US LEC of South Carolina Inc.; US LEC of Tennessee Inc.; US LEC of Virginia Inc.; and US LEC Communications Inc.

  
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## STATEMENT

US LEC Corp, on behalf of itself and its operating subsidiaries, have established operating procedures that ensure compliance with the FCC's regulations regarding the protection of consumer proprietary network information ("CPNI").

- a) US LEC has implemented a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI
- b) US LEC continually trains its personnel as to when they are and are not authorized to use CPNI. US LEC has established disciplinary procedures should an employee violate the CPNI procedures established by US LEC.
- c) US LEC maintains a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. US LEC maintains a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record includes a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. US LEC retains the record for a minimum of one year.
- d) US LEC has established a supervisory review process regarding carrier compliance with CPNI rules for outbound marketing situations and maintains records of carrier compliance for a minimum period of one year. Specifically, US LEC sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

**Attachment:**

US LEC Corp. Policy

Use of CPNI

**US LEC Corp. Policy  
Use of Customer Proprietary Network Information  
and Carrier Proprietary Information**

**Purpose**

The purpose of this policy is to state US LEC's policy on the use of Customer Proprietary Network Information (CPNI) and Carrier Proprietary Information (CPI). Any and all US LEC processes and procedures that pertain to the handling, distribution and use of CSR Requests and billing information must comply with the Federal Communications Commission's ("FCC") Rules.

**Definition of CPNI and CPI**

CPNI is information that is available to US LEC employees by virtue of employment and the company's basic customer relationship. Information may include the quantity, technical configuration, type, location, destination, bill information and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier for local or toll service.

**Executive Summary**

It is US LEC's policy that its employees remain in continuous compliance with the FCC's rules which prohibit US LEC and its employees from using the request of another carrier for customer information as a marketing tool to retain that customer. This means that when another carrier, be it another CLEC, an ILEC company or other carrier who has active marketing efforts ongoing with an existing US LEC customer and requests a customer service record (CSR) from US LEC, that US LEC may **NOT** contact that customer for the purposes of retaining the customer. Only after the customer has switched carriers and is installed and operating with that new carrier, may US LEC contact the customer and engage in winback marketing activities.

**US LEC Responsible Party:**

Any questions regarding this policy should be directed to the Director, Regulatory & Industry Affairs.

Any violations of the FCC's Rules by other carriers to whom US LEC is directly marketing to their customers should be directed to the Regulatory Department.

## **US LEC Workgroups Affected**

Any employee, without regard to title, that has, or may have access to information concerning CPNI.

## **Background**

The FCC in Orders issued in 1998 and 1999, set forth the rules on the use of Customer Proprietary Network Information (CPNI) and Carrier Proprietary Information (CPI). In those Rules, the FCC determined that:

“CPNI includes, among other things to whom, where and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent the service is used.” September 1999 Order at Para. 1.

The FCC also found that its rules apply to all classes of carriers – ILECs and CLECs – and was not persuaded by any arguments that the ILECs should be treated differently than the CLECs.

The Order further determined that “competition is harmed if any carrier uses carrier-to-carrier information, such as switch of PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly.” Order at Para. 76. This means that a carrier, upon receipt of a CSR or other communication indicating that another carrier is actively marketing to an existing customer, may not contact that customer for the purpose of retaining the customer.

Any activities engaged in by any carrier that utilizes a CSR request or other communication of a competing carrier for retention activity is a violation of Section 222 of the Communications Act of 1934, as amended as well as Part 64 of the FCC’s Rules. Carriers who do not comply with these rules may be subject to complaint proceedings filed by other carriers, and will be required to defend those complaints before the FCC. Should such complaints be proven, the carrier engaging in the improper use of the CPNI or CPI may be subject to fines as well as the legal costs involved in defending the complaint.

## **Text of FCC CPNI Rules and US LEC Procedure to Comply**

47CFR64.2009 Safeguards required for use of Customer Proprietary Network Information.

- a) Telecommunications carriers must implement a system by which the status of a customer’s CPNI approval can be clearly established prior

to the release of CPNI. (Prior to release of a CSR or other customer data to another carrier, the US LEC employee releasing the information must have in their possession a Letter of Authorization (LOA) signed by a person that has the legal authority to bind the customer in a contract. Additionally, a copy of the LOA must be inserted into a permanent file.)

- b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place. *(If you use or release CPNI data in a manner not consistent with the FCC's rules, you are subject to disciplinary action for violating US LEC's Employee Handbook that states in part, "Failure to abide by these policies may lead to appropriate disciplinary action, including, without limitation, disciplinary suspension without pay and termination.")*
- c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year. *(If you use a customer's CPNI in sales or marketing or release a customer's CPNI to other companies, a permanent record of the use must be made. The record must identify the sales campaign, the targeted products and services. (see paragraph a)*
- d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval. *(Before requesting CPNI data from another company, the request must be reviewed by supervisory personnel to insure compliance with the rule, including the authenticity of the LOA and that record maintained for at least one year.)*